

REMARKS

The previous amendments and following remarks form a full and complete response to the Office Action dated June 25, 2009. Applicants have cancelled claim 1 without prejudice or disclaimer and amended claims 2-7. Support for the claim amendments can be found, *inter alia*, in the claims as originally filed. Support for new claims 11-13 can be found, *inter alia*, in claims 1, 3, and 7 as filed. Applicants have cancelled claims 8-10 without prejudice or disclaimer. Accordingly, claims 2-7 and 11-13 remain pending in the present application and are submitted for consideration.

Claim Rejections under 35 U.S.C. §112

The Office Action rejected claims 1-7 under 35 U.S.C. § 112, first paragraph for allegedly failing to comply with the written description requirement. Specifically, the Office Action alleged that the claims contain subject matter not described adequately in the specification. Applicants have deleted claim 1 and amended the remaining claims to delete the means plus function language from the claims thereby obviating the rejection under 35 U.S.C. § 112, first or sixth paragraphs. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 2-7.

Claim Rejections under 35 U.S.C. §102

The Office Action rejected claims 1, 2, and 5 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,321,112 to Masuo (“Masuo”). Applicants traverse the rejection on the basis that claims 2 and 5 (claim 1 having been cancelled) recite subject matter not disclosed by Masuo.

Masuo relates to a device to measure body fat in order to generate a body mass index. *See* Masuo at col. 1, lines 5-14. To that end, it describes left and right grips 12 and 13 having electrodes 19 and 20 to measure the resistance of the body. *Id.* at col. 5, lines 34-38. Additionally, the device includes left and right foot guides 53 and 54 that each has two electrodes 55 and 56. *Id.* at col. 5, lines 39-42. By introducing a signal between various combinations of electrodes, the device can arrive at a body mass index. *See Id.* at Abstract. Masuo, however, fails to disclose each and every feature of the claimed invention.

Claims 2 and 5 are patentable because they depend from new independent claim 11, which is also patentable over Masuo because Masuo fails to disclose each and every feature of claim 11. For instance, Masuo fails to disclose a sensor assembly for determining the condition of a structure so as to confirm whether the structure is constituted by skin and living tissue that is “adapted to alter which electrodes constitute current supply electrodes and/or which electrodes constitute pickup electrodes between different measurements so as to alter the distance(s) between the current supply electrodes and/or the pickup electrodes to thereby alter the depths of the structure at which the measurements are performed,” as claim 11 requires. The claims recite this limitation because, as noted by the Specification, “the electrical properties of the finger vary with depth.” *See* Specification¹ at ¶ 70. These changes in the electrical properties, which are very characteristic for live fingers, are used to improve the identification of live fingers. *Id.* at ¶ 71. Masuo simply does not disclose this feature of claim 1. Indeed, since Masuo is directed to measuring the amount of body fat, and not whether a finger is alive or not, it would actually have no reason to disclose this feature of claim 11. Claims 2 and 5 are patentable for at least the same

¹ Unless otherwise noted, citations to the Specification refer to U.S. Patent Application Publication No. 2005/0281441, published on December 22, 2005.

reasons as claim 11, from which they depend. Applicants, therefore, respectfully request the withdrawal of the rejection of claims 2 and 5.

New Claims

Applicants have amended the claims to include patentable new claims 11-13. Claim 11 is patentable for the reasons stated above with respect to the discussion of the patentability of claims 2 and 5. Claims 12 and 13 are patentable because they include the features of claims 3 and 7, respectively. The Office Action made no prior art rejection of the subject matter of claims 3 and 7. Since the prior art fails to disclose the subject matter of claims 3 and 7, claims 12 and 13 are, in turn, also patentable over the prior art. Applicants, therefore, respectfully request that the Examiner allow claims 11-13.

CONCLUSION

In view of the above, all objections and rejections have been sufficiently addressed. Applicants submit that the application is now in condition for allowance and request that the Examiner allow claims 2-8 and 11-13 and pass this application issue.

Applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account No. 02-2135.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the Applicants' undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

Respectfully submitted,

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